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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 547

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COMMON PLEAS COURT OF HAMILTON COUNTY, OHIO

THOMAS J. KEHOE,
1904 Rookwood Road
Silver Spring, Md. 20910
Attorney for Petitioner.

Of Counsel:

MILLARD W. RICE,
919 Lakeview Drive
Falls Church, Va. 22040

JOSEPH B. MATRE,
1907 Rookwood Road
Silver Spring, Md. 20910

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Petitioner

v.

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE;

REVEREND WILLIAM SHAW, 511 South Monroe Street, Monroe, Michigan;

ST. EDWARDS CATHOLIC CEMETERY, Cynthiana, Harrison County, State of Kentucky;

ST. TERESA CHURCH, Overlook and Glenway Avenues Cincinnati, Ohio;

ST. EDWARDS CHURCH, Cynthiana, Harrison County, State of Kentucky;

LITTLE SISTERS OF THE POOR, Riddle Road, 476 Riddle Road, Cincinnati 20, Ohio;

ST. VINCENT DEPAUL CONFERENCE of St. Teresa Church, Overlook and Glenway Avenues, Cincinnati, Ohio;

LITTLE SISTERS OF THE POOR, Florence Avenue, 2024 Florence Avenue, Cincinnati, Ohio;

THE UNKNOWN HEIRS, DEVISEES, LEGATEES, EXECUTORS, ADMINISTRATORS AND ASSIGNS OF MICHAEL E. KEHOE, also known as M. E. KEHOE, whose names and places of residence are unknown;

KARL J. ALTER, Archbishop of Cincinnati, Trustee for the use and benefit of the Little Sisters of the Poor of Florence Avenue; Little Sisters of the Poor of Riddle Road; St. Vincent DePaul Conference of St. Teresa Church, Cincinnati, Ohio; St. Teresa Chrach, Overlook and Glenway Avenue, Cincinnati, Ohio;

MOST REVEREND RICHARD ACKERMAN, S.T.D., Roman Catholic Bishop of the Diocese of Covington, Kentucky and his successors in office for the use and benefit of St. Edwards Church, Cynthiana, Kentucky and St. Edwards Catholic Cemetery, Cynthiana, Kentucky, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE COMMON PLEAS COURT OF HAMILTON COUNTY, OHIO

This is a Petition for Writ of Certiorari to the Common Pleas Court of Hamilton County, Cincinnati, Ohio, which on August 19, 1963 entered a judgment pursuant to jury verdict for the defendants-appellees against the plaintiff-appellant.

OPINIONS BELOW

The opinions of the courts below appear in the appendix, together the APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI, followed by the ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether public policy does not require the Court's careful scrutiny of an alleged Will, which bequeathes 80 per cent of a modest estate to the institutions and officials of the Roman Catholic Church, with only 5 per cent to the deceased's only legal heir.

Whether the Court of Common Pleas, Hamilton County, Ohio was in error in ruling that there was no evidence of undue influence and thus preventing the jury from evaluating the value of the evidence in support thereof.

Whether in holding that the testator had the mental capacity to execute the unnatural Will in question was not such gross error as to set aside the purported Will.

Whether the Court of Common Pleas, Hamilton County, Ohio was not in error in admitting to evidence the letter of September 19, 1959, addressed by the petitioner to his uncle as wrongfully indicating petitioner's belief in his uncle's mental capacity.

Whether the heirship chart (Proponent's Exhibit #7) was not fraudulently introduced during the trial before the Common Pleas Court of Hamilton County, Ohio.

STATEMENT OF THE CASE

The purported Will drawn up for my uncle, Michael E. Kehoe, on August 19, 1959, five months before his 86th birthday, is the question at issue. This instrument was prepared by one Charles C. Boyle, an attorney at law in Hamilton County, Cincinnati, Ohio, and he and his wife, Alvina T. Boyle, were the subscribing witnesses.

My uncle was a decrepit, feeble and senile man and a religious fanatic, who felt that he had to buy his way to heaven. Testimony will show that the financial adviser of the Kehoe family for many years, Frank J. Altenau, consulted with Michael E. Kehoe shortly after the death of his sister, Phoebe, during the months of May and June, 1959, at which time he stated he wished to make a new Will. Mr. Altenau stated unequivocally that, at those times, and on August 19, 1959, Michael E. Kehoe did not possess sufficient mental capacity to form the purpose and intent to make a Will (Bill of Exceptions, pages 81 to 86). However, three months later, he did execute a Will under the direction of Charles C. Boyle. After the execution of the paper writing in question, the Petitioner and his wife, Rose, who had been in close association with the family throughout the years, testified that in December, 1959, they had visited with Michael E. Kehoe for several days and were alarmed at his physical and mental deterioration, and that, in their opinion, on December 28, 1959, and for many months prior thereto, Michael E. Kehoe, did not possess sufficient mental capacity to form the purpose and intent to make a Will.

It is significant that each and every fact adduced on behalf of Contestant, bearing upon the question whether on August 19, 1959, Michael E. Kehoe possessed sufficient mental capacity to form the purpose and intent to make a Will, was fully corroborated by each and every witness produced by Contestant. The housekeepers, the neighbors, the adviser and the only relatives, each corroborated the testimony of the other, that, based upon their personal observations of the testator and their close association with him im-

mediately prior to and on August 19, 1959, Michael E. Kehoe did not possess sufficient mental capacity to form the purpose and intent to make a Will.

Michael E. Kehoe resided alone in the family home on Ralph Avenue, in Cincinnati, Ohio, from May 3, 1959, until February 1, 1961, when he was stricken and taken to St. Francis Hospital, Cincinnati, Ohio, where he died on March 1, 1961, at the age of eighty-seven years. He was unmarried and had resided with three maiden sisters for many years. Phoebe B. Kehoe, the last surviving sister, who managed all family business, died on May 3, 1959. The petitioner, Thomas J. Kehoe, a nephew, is the sole heir-at-law of Michael E. Kehoe and the Contestant in this case.

REASONS FOR GRANTING THE WRIT

Unnatural Provisions In Will

The purported will, of a feeble, decrepit and senile man (age 85) who, some 16 months later, died by reason of cerebral arteriosclerosis, compounded by cerebral thrombosis and hemiplegia, which must have existed since long before August 19, 1959 and undoubtedly seriously affected his thinking ability—who was the last survivor of 11 brothers and sisters—most of whose modest estate (some $80,000.00) was inherited down the line successively through three brothers, including his oldest brother, the appellant's father, and later through three older sisters (which facts he had once known, but had probably forgotten about) which was signed by him, obviously with a shakey hand, skipping the letter "a" in his first name, in the presence of the attorney, Charles C. Boyle, who had personally typed such will, with himself and his wife as the only witnesses thereof admitted that he bequeathing only 5

per cent of such estate to his only legal heir (his only nephew, who has been unemployed since 1958 and has been adjudged by two federal agencies as being totally disabled and unemployable), with 5 per cent to his wife, 5 per cent to his only son and 5 per cent to his son's wife, 10 per cent to Father Shaw, 10 per cent to each of two churches for saying masses, and 10 per cent to each of five different institutions of the Roman Catholic Church, is so peculiar and unnatural as to warrant the conclusion that the testator was not then of such sound mind as to be fully aware of the results of such queer, erratic, abnormal, eccentric and unfair provisions and should therefore be declared as null and void, *ab initio.*

A Will containing unjust or unnatural provisions demands close judicial scrutiny, and the proponents have the burden of giving some reasonable explanation of the unequal, or unnatural, provisions of the Will, where they are coupled with suspicious circumstances, as where there is also evidence of weakness of mind on the part of the testator and fraud or undue influence on the part of the devisees, or where the provisions of the Will are grossly unreasonable, and plainly inconsistent with testator's duty to his family.

An inference of undue influence may be drawn from a Will which makes disproportionate gifts to strangers of the blood. Furthermore, a Will which makes an unnatural, unjust or unfair distribution of the testator's estate by unduly benefiting those who have little or no claim by reason of relationship to the testator's bounty, and by excluding in whole or in part those who have a substantial claim by reason of relationship to the testator's bounty, may give rise to a presumption of fraud or undue influence where there is clear proof of the weakened intellect of the testator.

Subtle Undue Influences

Such an unnatural, unjust and discriminatory document, as is this alleged Will, should be conclusively presumed to have been the result of subtle undue influence, induced by the principal preoccupations of the testator during the last years of his life. During this period, his usual practice each morning was to attend early Mass at his Church, proceed to a nearby beer parlor to drink several beers with some of his cronies, then back home for breakfast several hours later and to gaze at the television set most of the day, whether on or off. After supper back to the beer parlor and several more beers before returning home to go to bed. He followed this practice even during the period from 1956 to 1959, when his only remaining sister, Phoebe, was confined to her home preceding her death on May 3, 1959.

On Sunday he varied his program by going with his male friends—members of the St. Vincent DePaul Society—to visit one or two favorite hospitals to pass out candy to patients and then followed by a visit to some nearby beer parlor, to treat himself, his automobile driver and other friends to several beers. "Take him away from the corners and he would die" was a remark by his pastor (who died before the trial) to the appellant, which remark caused the appellant not to interfere with his mode of living.

It is worth noting that the attorney who personally typed the alleged Will specializes in his law practice primarily in handling the legal problems of those who have been referred to him by many of the religious institutions remembered in this instrument. Said attorney, who had himself designated as the Executor in the self-typed alleged Will, was thereby to derive

further monetary benefits therefrom, directly and indirectly, as has been the case in administering the estates of the testator's sisters, Lucy, Alice, and Phoebe (he also prepared the Wills of Alice, and Phoebe but, strangely, not for Lucy) before Michael's death, thereby furnishing motivation and opportunities for subtle, undue influence exercised with such testators.

Several of the proven established facts and circumstances as to the testator and his attorney, as well as Father Shaw, in addition to the distorted terms of the alleged Will, are such as to arouse strong suspicions of subtle undue influence, coupled with the fact that the testator was a religious fanatic, who was evidently much concerned and anxious to assure himself of entrance into Heaven.

Much more positive proof of such subtle undue influence was not available at the time of the trial before the Court of Common Pleas, because of the unfortunate prior deaths of several key witnesses—the owner and bartender of the nearby beer parlor, Mr. Uebel, the testator's own priest, Monsignor Anthony, Pastor of St. Teresa's Church, Cincinnati, Ohio, the appellant's spiritual adviser, Reverend John Madden, Assistant Professor of Sacred Eloquence, Catholic University, Washington, D. C., who had long known the petitioner, and the life-long friend of the Kehoe and Cavanaugh families, Holton Hatterick.

Undue influence can be exerted even though the person complaining was provided for in the will. A belief in any religious creed, if played on by one designing to influence, and thereby influencing, the believer's testamentary disposition of his property, may constitute undue influence. (Section 229, 94, C.J.S.).

It is the general rule in practically all jurisdictions that undue influence is presumed and the burden of proof shifted so as to require the beneficiaries (80 per cent to Church groups) to produce evidence which at least balances that of the Contestant, when, in addition to the confidential relation, there exist suspicious circumstances, such as the fact that the beneficiaries, or persons who benefit by the Will, took part or participated in the preparation or procuring of the Will (Attorney Boyle actually drafted it and assisted in its execution. He and his wife were the witnesses). A presumption of undue influence will arise if it is shown that, in addition to the confidential or fiduciary relation, the testator was dominated, or controlled by the beneficiaries, or that the testator was weakminded or in frail health, particularly susceptible to influence, or that the provisions of the will are unnatural and unjust, or that the persons designated as recipients of benefits thereunder unduly profited by the Will.

Petitioner further points out that the Court of Common Pleas and the jury were deceived into believing that the chart showing the Kehoe family heirship, had been prepared during the previous hearing before the Probate Court as to the Will of Phoebe Kehoe, by Judge, Chase M. Davies, on the basis of information submitted by Michael Kehoe, thereby to establish the excellence of his memory about three months after he executed the purported Will. This deceit was not uncovered until November 18, 1963, the date of filing of the Answer Brief of Proponents, in which, on page 11, it is admitted that:

> "This chart did not come from the files of the Probate Court, . . . but it came from Mr. Boyle's own files."

Presumably, therefore, such chart had probably been prepared by Mr. Boyle some time prior thereto and should not have been admissible to indicate Michael's excellent memory and mental capacity.

The petitioner's interest in the "Constitutional Rights of the Mentally Ill" began long before his admission to practice law, his testimony at the time of the eight-day trial points to the fact that "Phobia" of religion—dogs, cats, water—negroes—alcohol—drugs—and fear of hell and the entrance into Heaven, were almost constantly in the minds of his aunts and Uncle Michael.

(Petitioner's freedom from such phobias was brought about by his having a different outlook on life, and a Mother and Father who provided for a different and broader view of family, home and religious training.)

The testimony will show that the petitioner was always willing and available for any help or assistance he could render other members of the Kehoe family, being solicitous of their welfare, including his only cousin, John G. Fischer, now deceased. Your petitioner's knowledge of the family's financial, physical and mental limitations caused him to exercise as close a supervision as possible of the financial structure of the implied Trust Fund, created by his uncle, James Kehoe.

Petitioner sought and secured what he thought was competent legal assistance, first in Mr. Anthony P. Conlon of Cincinnati, Ohio, who later became ill, and then obtained the services of Mr. John W. Wilke, also of Cincinnati, Ohio and Mr. Warren E. Miller of Washington, D. C. However, since appealing to the Supreme Court of Ohio in January 1964, your peti-

tioner has been forced to go it "alone", with legal assistance as mentioned in my application for extension of time to file this petition.

Before petitioner's Motion for a new trial was overruled by the Common pleas Court of Hamilton County, Ohio, attention was called to irregularities in the administration of Trusts that Defendants-Appellees have incorporated into the corpus of the estate of Michael Kehoe, also known as M. E. Kehoe. This is set forth in my letter to the Honorable Chase M. Davies, Judge of the Probate Court, Hamilton County, Ohio, dated April 3, 1963, which is as follows:

April 3, 1963

The Honorable Chase M. Davies
Judge of the Probate Court
Hamilton County,
Court House,
Cincinnati, Ohio

Re: Thomas J. Kehoe a/k/a Thomas Kehoe
1904 Rockwood Rd., Silver Spring, Md.
Plaintiff

vs.

Charles C. Boyle, Executor of the Last Will and Testament of Michael E. Kehoe a/k/a M. E. Kehoe
601 Schmidt Bldg., Cincinnatti 2, Ohio
(Estate No. 228487)

Dear Judge Davies:

From the revealing and shocking testimony as produced at the trial last week in the above captioned case, I am forced to enter a complaint under Section 2109-50 of the Code of Ohio.

As the heir-at-law and next-of-kin I have found that there was no administration in the estate of Lucy Kehoe, who died in Hamilton County, Ohio

on May 27, [illegible]1 as provided in Section 2101-12 (Par. B). This matter came to my attention from the inventory filed in the Estate of Michael E. Kehoe, No. 228487.

Part of the assets of the estate of Michael E. Kehoe came from the estate of Lucy Kehoe and two other sisters who died after Lucy.

Since Lucy Kehoe had an estate, but no administration, I hereby apply as the only living next-of-kin and nephew, under Section 2109-01 for appointment as Administrator of Lucy Kehoe's estate and will act as Attorney also under Section 2109-03 as I am a member of the Ohio Bar.

Yours very truly,

/s/ THOMAS J. KEHOE
Thomas J. Kehoe

Ohio Code, Section 2109-50: "PROCEEDING WHEN ASSETS CONCEALED OR EMBEZZLED" referred to in my letter of April 3, 1963, to Judge Davis is as follows:

> 2109.50 Proceeding when assets concealed or embezzled.
>
> Upon complaint made to the probate court of the county having jurisdiction of the administration of a trust estate of the county wherein a person resides against whom the complaint is made, by a person interested in such trust estate or by the creditor of a person interested in such trust estate against any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any moneys, chattels, or choses in action of such estate, said court shall by citation, attachment or warrant, or, if circumstances require it, by warrant or attachment in the first instance, compel the person or persons so suspected to forthwith appear before it to be examined, on oath, touching the matter of the complaint.

Judge Davies replied under date of May 14, 1963, as follows:

PROBATE COURT
HAMILTON COUNTY
CINCINNATI 2, OHIO
CHASE M. DAVIES, JUDGE

May 14, 1963

Mr. Thomas J. Kehoe
1904 Rockwood Road
Silver Spring, Maryland

Dear Mr. Kehoe:

I have delayed answering your letter of April 3, relative to the will contest in the Michael E. Kehoe estate and other matters relating to this estate until I have had an opportunity to examine the records in this court and talk to counsel in the case.

The Probate Court, as you know, under the Ohio law, has nothing to do with contest matters, as jurisdiction in will contest cases is lodged in the Common Pleas Court.

If your aunt, Lucy Kehoe, died a resident of Hamilton County, Ohio, in 1951. leaving property to be administered in this county (as stated in your letter), it would be necessary for some interested person to make an application in this court to administer her estate, or to present her will for probate, in the event she died testate. It would be necessary for such person to come into court and make an application in the books provided for that purpose, as it cannot be done by letter which you, apparently, have attempted to do in your letter of April 3, 1963.

If there is anything further we can do to assist you, please do not hesitate to call upon us.

Sincerely,

/s/ CHASE M. DAVIES
mkc

CHASE M. DAVIES
Probate Judge

CMD/MKC

cc: Mr. Louis A. Ginocchio
Mr. John W. Wilkie

Petitioner contends, in view of all these facts, and circumstances that the Court of Common Pleas was in error in ruling that there was no evidence of undue influence, thus preventing the Jury from giving any consideration as to the suspicious circumstances so indicated.

Your petitioner also strongly contends that the Court of Common Pleas was in error in permitting the submission to the Jury, the letter dated September 19, 1959, addressed to the testator by the appellant and obtained by fraud, and without appellant's permission. Seizure of such private papers was a violation of both Amendment IV and Amendment V of the Constitution of the United States of America.

AMENDMENT IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

and Amendment V of the Constitution of the United States of America:

AMENDMENT V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal

case to be a witnes against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

It will be found that:

(1) Compulsory production of the private papers of the owner (Plaintiff-Appellant) constituted search and seizure within the meaning of the IV Amendment of the Constitution.

(2) In substance such seizure compelled your petitioner to be a witness against himself in the contention of Defendants-Appellees and in violation of Amendment V.

(3) Because it was a violation of the V Amendment, it was also an unreasonable search and seizure under the IV Amendment. 116 U.S. 616

Boyd v. *United States* and *Mapp* v. *Ohio*, 367 U.S. 643.

Evidence of undue influence was wrongfully suppressed by the Court of Common Pleas and was withheld fraudulently through the fraud and conspiracy of the Defendants-Appellees, thus depriving the appellant of the protection of Amendment XIV, Section 1 of the Constitution of the United States of America:

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immuities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It is unquestionably most inconsistent with good public policy for any Church, or group, to be in a position to exercise such subtle influence on any of its adherents as to cause them to disregard normal family obligations and relationships, completely disregarding all natural affiliations with the decedent's only legal heir.

Moreover, such a strange Will, so disproportionately favorable to the various activities of the Roman Catholic Church, and unfavorable to your petitioner, is so utterly inconsistent with good public policy and against public interest as to be void and consequently the estate should be regarded as intestate.

If all testators should display such religious fears, superstitions and fanaticisms, our individual freedom, our private enterprise system and our democratic form of government, would be subverted and become so inoperative as to bring back the feudal system of the Middle Ages.

Finally, your petitioner adverts to the inscription set forth in the Jefferson Memorial, in the City of Washington, D. C., reading as follows:

> "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man".

Jefferson, the author of the Declaration of Independence and the Virginia Statute of Religious Freedom, clearly had in mind, religious tyranny, as well as political tyranny. Every learned person knows the nature of tyranny at which the Statutes of Mortmain were aimed. That tyranny still troubles the world today.

In the opinion of this humble petitioner, this honorable Court has an opportunity now to rectify the grievous injustice done to this petitioner and his family.

This judicial tribunal has but to strike a powerful blow against this most insidious form of tyranny, still rampart in this glorious land of the free and the brave.

CONCLUSION

It is submitted this petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

THOMAS J. KEHOE,
1904 Rookwood Road
Silver Spring, Md. 20910
Attorney for Petitioner.

Of Counsel:

MILLARD W. RICE,
919 Lakeview Drive
Falls Church, Va. 22040

JOSEPH B. MATRE,
1907 Rookwood Road
Silver Spring, Md. 20910

APPENDIX

Mr. Justice Potter Stewart
Associate Justice Supreme Court
of the United States,
Washington, D. C.

Re: Thomas J. Kehoe, also known as Thomas Kehoe,
1904 Rookwood Road,
Silver Spring, Maryland,
Plaintiff-Appellant

vs.

Charles C. Boyle, Executor of the Last Will and Testament of Michael E. Kehoe, also known as M. E. Kehoe, et al.
Defendants-Appellees
Adm. No. 228487
Appeal No. 38626

Application for Extension of Time Within Which to File Petition for Certiorari

1. Court of Common Pleas and Probate Court of Hamilton County, Ohio, whose Judgment and Order was reviewed by the Court of Appeals, First Appellate District, Hamilton County, Ohio and by the Supreme Court of the State of Ohio on June 3, 1964.

(Copy of all Orders please find attached):

2. Judgment and Order signed June 3, 1964.

3. Motion for an Order directing the Court of Appeals for Hamilton County, Ohio to certify its record overruled as was the Appeal, which was dismissed holding that no constitutional question existed.

4. Court of Common Pleas erred in permitting the introduction of certain written documents and letters that were at the time of their introduction objected to and excepted. Failure of the Trial Court and Probate Court

to recognize the existence of a conspiracy to defraud the next of kin. Constitutional questions involving the 1st, 4th, 5th and, perhaps, the 14th amendments of the Constitution will be raised.

Undue influence via Catholic and Church Organizations under Canon 1513, 1514 and 1515.

5. Your petitioner has diligently sought to have a Transcript prepared and as the original trial extended over a period of eight days, the Transcript has never been reviewed by your petitioner. The Attorneys of record, Mr. John W. Wilke of Cincinnati, Ohio and Mr. Warren E. Miller of Washington, D. C., decided on or about January 10, 1964 that they did not have sufficient time to prepare the Appeal to the Supreme Court of Ohio, so with their withdrawal the petitioner prepared the Appeal with the assistance of a member of the Bar of Ohio, an old and true friend of mine, The Honorable Kenneth Mooter, Cincinnati, Ohio, since I was not able to have the help or assistance from members of the Bar in Cincinnati, Ohio, due to the withdrawal from the case of Mr. Wilke and Mr. Miller. Upon returning to Washington I obtained the assistance of my neighbor of more than twenty years, Joseph B. Matre. He is now retired, but is a member of the Bar of Ohio and of the Supreme Court of the United States. Mr. Matre's address is 1907 Rookwood Road, Silver Spring, Maryland. I also sought and obtained the assistance of Mr. Millard W. Rice, 919 Lakeview Drive, Falls Church, Virginia, who is a member of the Bar of the State of Minnesota as well as the Supreme Court of the United States. Since neither of these attorneys have had an opportunity to acquaint themselves fully with the case in view of the delay in forwarding the Transcript and as their help is so vital in the preparation of my Petition for a Writ of Certiorari, it is respectfully requested that they be given the opportunity to review the record when it is received from the Court in Cincinnati, Ohio, and further

the fact that they are both away at this time, it is respectfully requested that an extension of at least sixty days be granted.

Respectfully requested,

THOMAS J. KEHOE
1904 Rookwood Road,
Silver Spring, Maryland.
Petitioner and Attorney for
Plaintiff-Appellant

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

THOMAS J. KEHOE, *Petitioner*,

vs.

CHARLES C. BOYLE, EXECUTOR

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 1, 1964

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the
Supreme Court of the
United States.

Date this 24th
day of August, 1964

THE SUPREME COURT OF THE STATE OF OHIO

1964 Term

No. 38626

THE STATE OF OHIO,
CITY OF COLUMBUS.

To wit: June 3, 1964

THOMAS J. KEHOE ETC., *Plaintiff-Appellant*,

vs.

CHARLES C. BOYLE ET AL., *Defendants-Appellees.*

Appeal From the Court of Appeals for Hamilton County

This cause, here on appeal as of right from the Court of Appeals for Hamilton County was heard in the manner prescribed by law and upon motion of the appellee to dismiss such appeal.

On consideration thereof, such appeal is dismissed for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellees recover from the appellant their costs herein expended; that a mandate be sent to the Court of Common Pleas to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this .... day of ..... 19.....

..... Clerk

..... Deputy

THE SUPREME COURT OF THE STATE OF OHIO

1964 Term

No. 38626

THE STATE OF OHIO,
CITY OF COLUMBUS.

To wit: June 3, 1964

THOMAS J. KEHOE ETC., *Plaintiff-Appellant,*

vs.

CHARLES C. BOYLE ET AL., *Defendants-Appellees.*

Motion for an Order Directing the Court of Appeals for Hamilton County to Certify its Record

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by John W. Wilke

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this .... day of ..... 19....

..... Clerk

..... Deputy

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, NO. 9346

THOMAS J. KEHOE, *Plaintiff-Appellant*

-VS-

CHARLES C. BOYLE, ET AL, *Defendants-Appellees*

Opinion

APPEAL ON QUESTIONS OF LAW FROM COURT OF COMMON PLEAS HAMILTON COUNTY, OHIO

Mr. Warren E. Miller, 810 18th Street, N. W., Washington, D. C., and Mr. John W. Wilke, Cincinnati, Ohio, for Plaintiff-Appellant,

Mr. Louis A. Ginocchio, Cincinnati, Ohio for Defendants-Appellees.

PER CURIAM

An examination of the record discloses no error prejudicial to the rights of Appellant. The judgment of the Court of Common Pleas, Hamilton County, Ohio is, therefore affirmed.

HOVER, P. J., HILDEBRANT and LONG, J. J. CONCUR.

COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

No. 9410

THOMAS J. KEHOE, also known as THOMAS KEHOE,
Plaintiff-Appellant

-vs-

CHARLES C. BOYLE, Executor of the Last Will and Testament of MICHAEL KEHOE, also known as M. E. KEHOE, ET AL, *Defendants-Appellees*

Judgment of Affirmance

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript and the original papers and pleasings from the Court of Common Pleas of Hamilton County, Ohio, and was argued by Counsel, on consideration whereof the Court find there is no error apparent on the record in said proceedings and judgment prejudicial to the appellant.

It is, therefore, considered by the Court that the judgment of the Court of Common Pleas be, and the same is hereby affirmed, and that the appellees recover from the appellant, their costs herein expended taxed at $ ———.

And the Court being of the opinion that there was reasonable grounds for this appeal, allow no penalty.

It is further ordered that a special mandate be sent to the Common Pleas Court of Hamilton County, Ohio for execution upon this judgment.

To all of which appellant, by his counsel, excepts.

John W. Wilke

Warren E. Miller
Attorneys for Plaintiff-Appellant

Louis A. Ginocchio
Attorney for Defendants-Appellees